

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:18-cv-507

KATHRYN MCHUTCHISON)	NOTICE OF REMOVAL
)	(Diversity of Citizenship
Plaintiff,)	28 U.S.C. §§ 1332, 1441 & 1446)
v.)	Removed from Superior Court of
SPENCER SCHAR,)	Durham County, NC
)	(Case No. 18-CVS-2943)
Defendant.)	

Defendant Spencer Schar, through counsel, hereby removes this action from the Superior Court of Durham County, North Carolina to the United States District Court for the Middle District of North Carolina pursuant to 28 U.S.C. §§ 1332, 1441 and 1446. As grounds for this removal, Defendant Schar shows the Court as follows:

1. On May 30, 2018, Plaintiff Kathryn McHutchison filed her Complaint in the General Court of Justice, Superior Court Division, Durham County, North Carolina, as Civil Action No. 18-CVS-2943. True and correct copies of the Complaint and the Civil Summons, which was also issued on May 30, 2018, are attached hereto as Exhibits 1 and 2, respectively.
2. In her Complaint, Plaintiff alleges claims for battery, assault, and negligence.
3. Schar, through his undersigned counsel, received copies of the Civil Summons and Complaint via email on June 4, 2018. Pursuant to an agreement between counsel for the parties, undersigned counsel for Schar signed and submitted an Acceptance

of Service document on June 5, 2018. That Acceptance of Service is attached as Exhibit 3.

4. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) because 30 days have not elapsed since the Summons and Complaint were received by Schar.

5. Upon information and belief, at the time this action commenced, Plaintiff was, and still is, a citizen and resident of North Carolina.

6. At all relevant times, Spencer Schar has been a citizen and resident of Palm Beach, Florida (Palm Beach County). A Declaration from Defendant Schar regarding his Florida citizenship and residency, as well as the money damages sought by Plaintiff, is filed contemporaneously herewith (“Schar Decl.”).

7. This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1332. This lawsuit is a civil action where the parties are citizens of different states, and in which Plaintiff seeks money damages in excess of \$75,000.

8. Without admitting the validity of any of the Plaintiff’s claims or any liability for any of the amounts set forth therein, the allegations in the Complaint involve a claim in excess of \$75,000. More specifically, Plaintiff claims in her Prayer for Relief in her Complaint that her total damages exceed \$25,000 (since Plaintiff’s claims includes ones for negligence and punitive damages, North Carolina Rule of Civil Procedure 8(a)(2) precludes Plaintiff from stating the full amount she seeks to recover in her complaint).

Plaintiff also seeks to recover punitive damages, as well as attorneys' fees and all costs, expenses and interest as may be allowed by law.

9. Moreover, before Plaintiff filed her Complaint, Plaintiff provided a written settlement demand letter to Schar, demanding that Schar pay Plaintiff well over \$75,000 in exchange of Plaintiff's agreement to not file the claims Plaintiff asserted in her Complaint. (Schar Decl. ¶ 8).

10. Pursuant to 28 U.S.C. §1441(a), this action may be removed to this Court because it is the District embracing Durham County, North Carolina, in which this action was pending before this Removal.

11. Copies of all process, pleadings and orders served upon Schar or filed in this action pending in Durham County Superior Court are attached hereto as Exhibits 1 (Complaint), 2 (Summons), 3 (Acceptance of Service), 4 (Civil Cover Sheet), 5 (Civil Receipting).

12. Written notice of the filing of this Notice of Removal will be provided to Plaintiff, together with a copy of this Notice of Removal and supporting papers. Pursuant to 28 USC § 1446(d), the foregoing will be filed with the Superior Court of Durham County, North Carolina.

WHEREFORE, Defendant Spencer Schar respectfully requests that the above entitled action be removed to the United District Court for the Middle District of North Carolina pursuant to 28 U.S.C. §§ 1332, 1441 and 1446.

Respectfully submitted, this the 15th day of June, 2018.

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.

/s/ Justin N. Outling

Kearns Davis
N.C. State Bar No. 22014
Post Office Box 26000
Greensboro, North Carolina 27420
Telephone: (336) 271-3174
kdavis@brookspierce.com

And

John W. Ormand III
N.C. State Bar No. 14160
Attorney for Plaintiff
P.O. Box 1800
Raleigh, NC 27602
Telephone: (919) 839-0300
Email: jormand@brookspierce.com

And

Justin N. Outling
N.C. State Bar No. 38409
Post Office Box 26000
Greensboro, North Carolina 27420
Telephone: (336) 373-8850
Email: joutling@brookspierce.com

Attorneys for Defendant Spencer Schar

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **NOTICE OF REMOVAL** has been electronically filed using the CM/ECF system, and the following parties were served by [electronic mail as follows:]

Robert E. Zaytoun
Matthew D. Ballew
John R. Taylor
Zaytoun Law Firm, PLLC
3130 Fairhill Drive, Suite 100
Raleigh, NC 27612
Attorneys for Plaintiff

This the 15th day of June, 2018.

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.

/s/ Justin N. Outling
Justin N. Outling
North Carolina State Bar No. 38409
Post Office Box 26000
Greensboro, North Carolina 27420
Telephone: (336) 373-8850
Email: joutling@brookspierce.com

Attorney for Defendant Spencer Schar